



**COURT OF APPEALS OF INDIANA
ORAL ARGUMENT AT A GLANCE
HAMILTON SOUTHEASTERN HIGH SCHOOL
FISHERS**



R.H. v. State of Indiana

Appeal from:

Marion County Superior Court,
Juvenile Division
The Honorable Scott Stowers,
Magistrate

Oral Argument:

Wednesday, September 30, 2009
1:25 p.m. — 2:05 p.m.
20 minutes each side

CRIMINAL LAW

In this case, the juvenile court adjudicated R.H. as a delinquent child for committing what would constitute a class A misdemeanor possession of marijuana, if committed by an adult. We will discuss whether a police officer's encounter with R.H., which eventually resulted in the seizure of marijuana from the vehicle being driven by R.H., violated the Fourth Amendment of the United States Constitution or Article 1, Section 11 of the Indiana Constitution; and whether the State presented sufficient evidence to prove that R.H. committed what would constitute class A misdemeanor possession of marijuana, if committed by an adult.

CASE SYNOPSIS

Facts and Procedural History

At approximately 11:40 p.m. on November 22, 2008, Indianapolis Metropolitan Police Officer Shawn Holmes was patrolling in a fully marked police car, when he responded to a dispatch reporting a suspicious white vehicle with four males inside of it parked in front of the caller's residence in the 1400 block of Milburn Street. The concerned caller informed dispatch that she did not recognize the vehicle and "was fearful that there was something going on."

Officer Holmes parked at the corner of 14th Street and Milburn Street and observed "a white four door vehicle with what appeared to be occupants inside" parked on the street. He, however, could not see anything else inside the vehicle due to "the amount of smoke" inside of it. He activated his emergency lights because "it

was dark that night and [he] wanted to be visible to" other vehicles.

Officer Holmes approached the vehicle, again observing heavy smoke, and knocked on the rear right passenger window. "[A] large amount of smoke came billowing out" as the window rolled down. Officer Holmes immediately recognized the smell of burnt marijuana. Four males were inside the vehicle, including R.H., who was in the driver's seat. Officer Holmes had the occupants exit the vehicle and read them their Miranda warnings. He asked the two adult occupants whether there was any more marijuana in the vehicle; they replied that "[t]hey had smoked it all."

Officer Holmes, however, observed "what was left of a burnt marijuana cigarette" in the front console's ashtray. He also observed

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two bags containing what appeared to be marijuana in the front passenger footwell, “just setting [sic] out.” The bags “would have been at the passenger’s feet.” Subsequent tests revealed that one bag contained 23.37 grams of marijuana; the other bag contained 9.37 grams of marijuana. The cigarette contained .07 grams of marijuana.

On December 10, 2008, the State filed a petition with the trial court, alleging R.H. to be a delinquent child for committing an act that would constitute class A misdemeanor possession of marijuana, if committed by an adult. The trial court approved the filing of the petition on December 17, 2008. The trial court denied R.H.’s motion to suppress evidence obtained during the search of the vehicle. The trial court held a denial hearing on February 4, 2009, after which it found the allegations against R.H. to be true and adjudicated him a delinquent child. The trial court placed R.H. on probation for six months and ordered him to complete thirty hours of community service.

Parties’ Arguments

1. Seizure of the Marijuana

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Similarly, Article 1, Section 11 of the Indiana Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Both the United States Constitution and the Indiana Constitution prohibit unreasonable searches and seizures, including seizure of a person. Generally, a seizure does not occur until a person is actually detained and not all police-citizen encounters constitute a seizure. For example, a seizure does not occur simply because a police officer approaches a person, asks questions, or requests his or her identification. Rather, a seizure occurs when a reasonable person would not feel free to go about his or her business.

R.H. asserts that the seizure of the marijuana resulted from a detention that violated the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Namely, he contends that Officer Holmes initiated an improper investigatory stop when he parked behind R.H.’s vehicle and activated his emergency lights. He also argues that Officer Holmes lacked reasonable suspicion to conduct an investigatory stop.

The State argues that Officer Holmes did not detain R.H. because he never stopped R.H.’s vehicle and that activating the emergency lights would not cause a reasonable person to believe they were not free to leave. The State also argues that even if Officer Holmes’ actions amounted to an investigatory stop, it was not improper because he had reasonable suspicion to believe that criminal activity might be afoot.

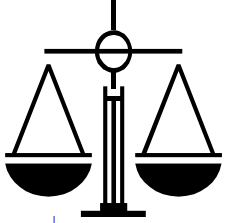
2. Evidence that R.H. Possessed Marijuana

R.H. further asserts that the State failed to present sufficient evidence that he possessed marijuana. Specifically, he argues that the State failed to prove that he knew of or had the ability to maintain control over the bags of marijuana and the marijuana cigarette. The State argues that it proved constructive possession, where the burnt cigarette was in plain view; the bags of marijuana were not hidden and were within R.H.’s reach; and the occupants of the vehicle had been smoking marijuana, as evidenced by the smoke in the vehicle.

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Glossary:



Adjudicate: A formal determination by a trial court.

Class A misdemeanor: A misdemeanor is a crime punishable by a fine or imprisonment for no more than one year. It is less serious than a felony. A class A misdemeanor is the most serious class of misdemeanors; thus, it carries the longest possible sentence and highest possible fine for misdemeanor offenses. A person who commits a class A misdemeanor may be imprisoned for one year or less and fined for \$5,000.00 or less.

Constructive possession: A person need not actually possess, or have something on his or her person, to be conviction of possession. Rather, a person may be convicted of possession if they constructively possess contraband, meaning they have the intent and capability to maintain authority and control over the item. Several factors can be used to show this intent and capability. Where no one else shares the place where the contraband is found, the inference may be made that the person knew of the contraband and could control it. Where other people are present or possess the place where the contraband is found, an inference of knowledge and control may be made when there are additional facts to support the inference. Such additional facts include (1) incriminating statements made by the person; (2) the person's attempt to flee or making suspicious movements; (3) evidence that drug manufacturing is taking place on or in those premises; (4) how near the contraband is to the person; (5) the contraband is within "plain view," or out in the open and easily observed; and (6) the contraband is near items owned by the person.

Delinquent child: A child is a delinquent child if, before the age of eighteen years, the child commits an act that would be an offense, or crime, if it had been committed by an adult. For instance, an adult who knowingly or intentionally possesses marijuana commits the crime of possession of marijuana. A child who does the same is considered delinquent. An act of juvenile delinquency, however, is not a crime,

and a child adjudicated in a juvenile court is not considered a criminal.

Denial hearing: A hearing before a judge during which the child denies the allegation that he or she is a juvenile delinquent. It is during this hearing that the judge hears evidence against the child.

Detention: The act of holding a person or thing for legitimate law enforcement purposes.

Investigatory stop: A police officer's stop of an individual to investigate possible criminal activity.

Miranda warning: Before a police officer arrests a person, he or she must read to that person his or her constitutional rights, including the person's right to remain silent; that any statement may be made against him or her in court; that he or she has the right to an attorney; and that if he or she cannot afford an attorney, one will be appointed.

Petition: A written formal request that something be done. Here, the State filed a petition with the juvenile court to initiate a juvenile delinquency proceeding against R.H.

Reasonable suspicion: Suspicion that criminal activity is afoot based on specific facts that can be articulated; a hunch or nonspecific suspicion does not constitute reasonable suspicion.

Seizure: For constitutional purposes, a seizure of a person occurs when a he or she reasonably believes that he or she is not free to go due to a law enforcement officer's show of authority or use of physical force.

Sufficient evidence: Sufficient evidence is enough evidence, or inferences drawn from the evidence, to support a verdict. Circumstantial evidence alone, which is evidence not gained from direct observation or personal knowledge, may support and sustain a conviction.

Suppress: If a person charged with a crime believes a police officer has unlawfully obtained evidence against him or her, the person may request the trial court to disregard, or suppress," that evidence. If the trial court grants the request, the evidence may not be used in determining whether the person is guilty of the crime.

TODAY'S PANEL OF JUDGES

Hon. Carr L. Darden (Marion County), Presiding

- Judge of the Court of Appeals since November 1994

Carr L. Darden was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

He is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife, Lundy Marie, recently celebrated their 50th wedding anniversary. Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation. In May 2006, he received the Distinguished Alumni Award at the annual IU Law Alumni Association reception, and in 2008, he was a recipient of the Distinguished Barrister's Award by the Indiana Lawyer Leadership in Law Committee. Judge Darden is also the recipient of three Sagamores of the Wabash, Indiana's highest distinguished citizen award, awarded by three different governors.

Judge Darden is deeply involved in his church and community, serving on the boards of numerous charitable organizations. He has participated in several legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association, and the American, Indiana State, and Marion County bar associations. One of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 250 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe

County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U.S.N.A., recently returned from his second deployment.

TODAY'S PANEL OF JUDGES**Hon. Paul D. Mathias (Allen County)**

- Judge of the Court of Appeals since March 2000

Paul D. Mathias was appointed to the Indiana Court of Appeals for the Third District in March, 2000. Prior to his appointment, he served as a judge of the Allen Superior Court – Civil Division in Fort Wayne for eleven years and before that as the referee of its Small Claims Division for four years.

Judge Mathias was born in LaGrange, Indiana, and grew up in the Fort Wayne area. He graduated with honors from Harvard University in 1976 and from the Indiana University School of Law in Bloomington in 1979, where he was a member of the moot court team. Until his appointment as small claims court referee he practiced law for six years in a medium-sized Fort Wayne law firm, concentrating in construction law, personal injury, domestic relations, and appellate practice.

Like all judges on the Court of Appeals, Judge Mathias writes over 150 opinions each year and votes on more than 300 opinions written by his fellow judges. Off the bench, he also maintains a keen interest in civic education. Judge Mathias is especially proud of his deep and long-standing commitments to the *We The People* program, which is the

civics education program sponsored by the Indiana Bar Foundation, Indiana State Bar Association, and the Indiana Judges Association, and to the Indiana Judges Association itself, which he has served as President and for which he continues to serve as a legislative liaison to the General Assembly. He is also an active member of national, state and local bar associations.

Judge Mathias has been honored to receive the Centennial Service Award from the Indiana State Bar Association, “[i]n recognition of the Indiana bar and judiciary, living and deceased, who have provided outstanding leadership and service to the public and the profession,” and a Sagamore of the Wabash award from Governors O’Bannon and Kernan.

Judge Mathias and his wife, Carlabeth, have been married thirty-three years and are the proud parents of two sons, Ethan and Corbin. Carlabeth is a child and family counselor in Hamilton County. They enjoy travel, music, theater, and doing just about anything together as a family.

ATTORNEYS FOR THE PARTIES



For Appellant, R.H.:

Anna Onaitis Holden
Marion County Public Defender Agency
Indianapolis

Anna Onaitis Holden graduated from Marquette University in 2000 with degrees in Writing-Intensive English and Sociology. In 2005 she graduated from the Indiana University School of Law—Indianapolis and was admitted to the Indiana Bar. Anna participated in the law school's criminal defense clinic and clerked for a criminal defense law firm while in law school.

Following graduation, Anna worked as a judicial clerk for the

Honorable Michael P. Barnes of the Indiana Court of Appeals. In March, 2007, Anna joined the Marion County Public Defender Agency as an appellate attorney. She represents clients appealing their criminal convictions, civil commitments, and terminations of parental rights. In addition to her work as a public defender, Anna teaches a legal writing and analysis course at the Indiana University School of Law—Indianapolis.

For Appellee, State of Indiana:

Kelly Miklos
Attorney General's Office
Indianapolis

Kelly Miklos is from Greenwood, Indiana. She obtained her B.A. in Anthropology in 1998 from IUPUI and her J.D. in 2001 from I.U. School of Law - Indianapolis. Kelly was admitted to the Maine bar in 2001, and practiced law in a small law firm in a variety of areas including Criminal Defense, Bankruptcy, Personal Injury, Family law, and Estate Planning and Administration. Kelly was admitted to the Indiana Bar in 2004, and became employed by the Office of the Indiana Attorney General as a deputy in the Appeals Division.

Kelly is a member of the Habeas Corpus and Capital Litigation Section of the Appeals Division and represents the State in capital and non-capital cases before state and federal courts of appeal and in state post-conviction proceedings. Kelly has presented over twenty-one oral arguments in the Indiana Court of Appeals, Indiana Supreme Court, Federal District Court, and Seventh Circuit Court of Appeals. This is Kelly's seventh oral argument before the Indiana Court of Appeals.